



**BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking Proceeding to  
Consider Rules to Implement the Broadband  
Equity, Access, and Deployment Program

Rulemaking 23-02-016  
(Filed February 23, 2023)

**THE UTILITY REFORM NETWORK (TURN)'S OPENING COMMENTS  
ON THE ORDER INSTITUTING RULEMAKING**

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## I. INTRODUCTION

Pursuant to Rule 6.2 of the Commission’s Rules of Practice and Procedure and in accordance with the schedule set out in the Order Instituting Rulemaking Proceeding to Consider Rules to Implement the Broadband Equity, Access, and Deployment Program (OIR),<sup>1</sup> The Utility Reform Network (TURN) respectfully submits these Opening Comments on the preliminary issues identified in the *OIR*. TURN further addresses questions concerning the scope, schedule, and categorization.

TURN welcomes the Commission’s commencement of this proceeding to devise rules to implement the state’s Broadband Equity, Access, and Deployment (BEAD) Program established by federal law<sup>2</sup> and administered by the federal National Telecommunications and Information Administration (NTIA). The NTIA’s Notice of Funding Opportunity (NOFO) provides numerous requirements for the BEAD Program.<sup>3</sup> The NOFO also gives states, like California, significant discretion to tailor BEAD-funded projects to the unique challenges and needs within the state. TURN supports the BEAD Program’s forward-looking emphasis on scalable, affordable, and more reliable access to twenty-first-century networks that serve the needs of Californians today and for the decades to come.

A key feature of the BEAD Program is the significant flexibility extended to the states, territories, and the District of Columbia that are eligible for BEAD Program funding (the

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<sup>1</sup> See Order Instituting Rulemaking Proceeding to Consider Rules To Implement The Broadband Equity, Access, And Deployment Program, R.23-02-016 (issued Mar. 1, 2023) (“OIR”).

<sup>2</sup> See Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, Section 60102(b), “Broadband Equity, Access, and Deployment Program,” 135 Stat. 429, 1182-1205 (2021), <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>, (codified as 47 USC § 1702) (hereinafter, “IIJA, BEAD Section”).

<sup>3</sup> See *generally* National Telecommunications and Information Administration, Notice of Funding Opportunity: Broadband Equity, Access, and Deployment Program (2022) (hereinafter, “BEAD NOFO, NOFO”).

“Eligible Entities”). Eligible Entities are encouraged to address the unique and varied digital divide challenges within each state and offer creative solutions to NTIA as part of the BEAD Program’s implementation process. California has been at the forefront of state-led efforts to close the digital divide. For this reason, the Commission should draw on or build upon its efforts to address the digital divide in California, such as its ongoing work pursuant to state law SB 156 and to modify the California Advance Services Fund (CASF). The BEAD Program’s flexibility provides a path for the Commission to address critical deployment and non-deployment aspects of the digital divide problem in California to a greater degree and with additional flexibility. As TURN has long advocated, the digital divide is not just one of infrastructure deployment, but of other essential challenges, such as broadband service affordability, reliability, and resiliency. For example, the NTIA’s implementation process requires stakeholder engagement at all stages of the implementation process precisely because the process does not presume the needs of communities receiving the benefits of BEAD funding. Further, the BEAD Program offers opportunities that encompass more than just addressing the deployment needs of unserved locations, including incorporating affordability, reliability, worker’s rights, and more, into the program's design.

For this reason, as TURN discusses in Section III below, the Commission should seek further comment on various issues prompted by other requirements in the BEAD NOFO. Among these requirements is the need to more directly address the BEAD NOFO’s stakeholder engagement, equity, discrimination, affordability, and non-deployment requirements. Finally, the Commission should address the impact of the subgrantee rules on Tribal communities.

## II. QUESTIONS IDENTIFIED IN THE OIR

TURN provides these OIR comments but reserves the opportunity to provide additional comments to these and other questions in replies.

- A. Question 1. Extremely High-Cost Threshold.** The NTIA’s Notice of Funding Opportunity requires the CPUC to establish an “Extremely High Cost Per Location Threshold” in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements. The NTIA expects the Extremely High Cost Per Location Threshold to be set as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible. How should the Commission define the threshold for locations that constitute “extremely high cost” locations?

TURN generally agrees with the preference for deploying end-to-end fiber where feasible and the need for a high threshold to ensure this goal. However, given the highly technical nature of the question, TURN recommends for the Commission to host a technical workshop to ensure all relevant stakeholders can discuss and provide considerations on the impacts of various possible thresholds. Furthermore, the Commission should consider directing the Communications Division Staff to produce a preliminary map identifying “extremely high cost” locations based on several preliminary thresholds. The Commission should then seek party comment on the proposed map and adjust accordingly.

- B. Question 2. Geographic Level.** The Notice of Funding Opportunity gives flexibility to states to solicit proposals from prospective subgrantees at the geographic level of their choosing—for example, on a per-location basis, per-census block basis, per-town, per-county or another geographic unit. States may alternatively solicit proposals for project areas they define or ask prospective subgrantees to define their own proposed project areas. What is the best, or most appropriate, geographic level for subgrantee proposals?

The BEAD NOFO provides Eligible Entities wide discretion to define the geographic

parameters for subgrantee proposals;<sup>4</sup> TURN generally recommends location-level subgrantee proposals with the Commission exerting flexibility and equity considerations on subgrantee defined geographic levels. This approach is aligned with recent federal broadband information collection. The Federal Communications Commission’s Broadband Data Collection maps offer location-level broadband information instead of less granular delineations like a census block. TURN’s recommendation is also aligned with state efforts to shift towards more granular delineations.<sup>5</sup> Here, for the BEAD Program, the Commission should consider using location-level information. This approach would allow subgrantee entities to delineate proposals using polygonal information to better target unserved and underserved areas.

Additionally, because the NOFO provides for states to solicit proposals for project areas they define or ask prospective subgrantees to define their own proposed project areas,<sup>6</sup> the Commission should consider allowing for flexibility in proposals, including for non-contiguous proposals. The Commission permits non-contiguous proposals in other contexts.<sup>7</sup> Such flexibility would permit subgrantees to focus on unserved or underserved locations. For example, a contiguous proposal that may not meet the IIJA’s requirements for unserved or underserved project locations could meet the requirements on an aggregated location or address basis when combined with locations nearby.

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<sup>44</sup> See BEAD NOFO at 38 (permitting Eligible Entities to “solicit proposals from prospective subgrantees at the geographic level of its choosing—for example, on a per-location basis, per-census block basis, per-town, per-county or another geographic unit” or “solicit proposals for project areas it defines or ask prospective subgrantees to define their own proposed project areas.”).

<sup>5</sup> See Decision 21-03-006, Rulemaking 20-08-021, at 8, 28, Finding of Fact #3 (issued Mar. 10, 2021) (citing to an FCC proceeding in which the FCC “acknowledged that the fixed and mobile broadband data collected on Form 477 is insufficient to support its universal service policy goals”) (hereinafter, “CASF Data Submission & Open Access Decision”).

<sup>6</sup> See BEAD NOFO at 38.

<sup>7</sup> See, e.g., Decision 22-04-055, Rulemaking 20-09-001, App. A, Federal Funding Account Program Rules and Guidelines, at A-13(issued Apr. 22, 2022) (“Non-contiguous project areas may be considered as a single project”).



Further, TURN suggests for the Commission to take comment on equity considerations when reviewing a subgrantee defined-geographic proposal. The Commission should seek comment on how to prevent “cherry-picking” of locations within an otherwise contiguous community such that more lucrative or least cost areas are included in the proposal while excluding other unserved areas in close proximity and perpetuating “donut holes” of coverage in unserved areas. TURN looks forward to providing further comment in replies.

**C. Question 3. Overlapping Project Areas. What mechanism should be used for overlapping proposals to allow for a like-to-like comparison of competing proposals?**

TURN is sensitive of the Commission’s need to address scenarios where there may be overlapping proposals. As an initial matter, all proposals should be required to include the subgrantee’s engagement and coordination efforts with impacted communities as well as testimony from impacted communities confirming such engagement and coordination. Later in the selection process, should the Commission have overlapping proposals and before drawing determinations from a paper comparison between the overlapping proposals, the Commission should seek comment from the impacted communities either through the county, local, or tribal governments or other public engagement. TURN reserves the right to provide further comment in replies.

**D. Question 4. Selection Among Priority Broadband Projects. In addition to the Primary Criteria and Secondary Criterion required in the Notice of Funding Opportunity, which additional prioritization factors should be considered?<sup>8</sup> How should they each be measured, and should they be weighted in prioritization?**

TURN recommends that the Commission consider each of the factors encouraged by the

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<sup>8</sup> See BEAD OIR at 6, n18 (noting, “Additional Criteria proposed are: Equitable Workforce Development and Job Quality, Open Access, and Local and Tribal Coordination”).

BEAD NOFO's primary<sup>9</sup> and secondary criteria<sup>10</sup> for Priority Broadband Projects,<sup>11</sup> as well as consider additional factors that align with Commission initiatives, including reliability and resiliency.

The BEAD NOFO provides Eligible Entities the discretion to develop additional secondary criteria, in addition to the original identified criterion—speed to deployment. Specifically, here, the Commission can “develop additional secondary criteria to be given weights that align with Eligible Entity and local priorities, subject to the requirement to give the greatest weight to the primary criteria and the approval of the Assistant Secretary in the Initial and Final Proposal process.”<sup>12</sup> The BEAD NOFO lists three selection criteria as part of the set of additional secondary criteria for Priority Broadband Projects.

#### 1. Priority Broadband Projects – Listed Additional Secondary Criteria

TURN strongly supports the Commission's consideration of each of these three listed additional secondary criteria for Priority Broadband Projects: (1) equitable workforce development and job quality considerations; (2) open access; and (3) local and Tribal coordination.<sup>13</sup> In particular, TURN supports including the open access criteria as aligning with

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<sup>9</sup> The BEAD NOFO requires that in selection among Priority Broadband Projects proposing to cover the same location or locations, an Eligible Entity must develop a selection process that primarily prioritizes minimizing BEAD Program outlay, commitment to affordability for symmetrical 1Gbps service in the project area, and a demonstrated record of and plans to comply with Federal labor and employment laws. NOFO at 43 (describing “primary criteria”).

<sup>10</sup> The BEAD NOFO requires secondary prioritization for speed to deployment and permits Eligible Entities to “develop additional secondary criteria to be given weights that align with Eligible Entity and local priorities, subject to the requirement to give the greatest weight to the primary criteria and the approval of the Assistant Secretary in the Initial and Final Proposal process.” NOFO at 43-44 (describing “secondary criterion” and “additional prioritization factors as additional secondary criteria”).

<sup>11</sup> The BEAD NOFO defines “Priority Broadband Projects,” and states that NTIA has “determined that “Priority Broadband Projects” are those projects that “use end-to-end fiber optic architecture.” BEAD NOFO at 42 (internal citations omitted).

<sup>12</sup> BEAD NOFO at 44.

<sup>13</sup> BEAD NOFO at 44.

policies to promote competition, and thus affordability, as discussed below in Section III.C. Further, an open access requirement would align with existing state requirements in the middle-mile contexts.<sup>14</sup> Additionally, local and Tribal coordination is essential to ensure that BEAD funding is responsive to the needs of the communities that the BEAD funds are meant to serve and that those entities can hold subgrantees to account for their commitments.

## 2. Priority Broadband Projects – Recommended Additional Secondary Criteria

As part of the additional prioritization factors for the Priority Broadband Projects,<sup>15</sup> the Commission should consider an additional secondary criterion that provides weight to proposals that propose reliable and resilient design measures in network deployments. This approach would greatly respond to the state's priorities, especially considering our state's recent natural disasters. In the aftermath of devastating wildfires, the Commission engaged in a continual effort to promote more resilient communications networks, prompting decisions requiring backup power and other resiliency measures.<sup>16</sup> Relatedly, the Commission is considering expanding service quality requirements to several types of communications networks, including broadband.<sup>17</sup> These and other efforts acknowledge the essential nature of connectivity in the

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<sup>14</sup> See CASF Data Submission & Open Access Decision, at 34, OP #3 (requiring broadband providers to offer open access to last-mile providers requesting to use middle-mile infrastructure funded by CASF grants).

<sup>15</sup> BEAD NOFO at 44.

<sup>16</sup> See *generally* Decision 21-02-029, Rulemaking 18-03-011 (issued Feb. 18, 2021) (adopting wireline provider resiliency strategies); Decision 21-10-020, Rulemaking 20-09-001 (issued Oct. 25, 2021) (adopting post-disaster community engagement and reporting requirements for Investor-Owned Utilities and facilities-based telecommunications service providers); Decision 20-07-011, Rulemaking 18-03-011 (issued July 20, 2020) (adopting wireless provider resiliency strategies); Decision 19-08-025, Rulemaking 18-03-011 (issued Aug. 23, 2019) (adopting an emergency disaster relief program for communications service provider customers) (collectively, "Resiliency Decisions")

<sup>17</sup> See *generally* Order Instituting Rulemaking Proceeding to Consider Amendments to General Order 133, Rulemaking 22-03-016 (issued Mar. 23, 2022) (hereinafter Service Quality OIR, Service Quality Proceeding).

normal course and especially in an emergency.

The Commission should seek comment on how to prioritize, measure, and weigh BEAD Program's emphasis on reliability<sup>18</sup> of BEAD-funded network projects and the state's efforts to promote more resilient networks. This would be aligned with the state priorities in light of our natural disasters but also in furtherance of the NOFO requirements for outages in the BEAD-Funded network. The Commission can measure reliability in at least three ways. First, for subgrantees already providing broadband service in the state, the Commission can draw on several sources of information that can indicate the ability of a prospective subgrantee to satisfy the BEAD NOFO's reliability requirement. To start, providers subject to the minimum service quality requirements of the Commission's General Order (GO) 133 provides one indicator of a provider's propensity to provide reliable broadband service, even as those requirements are not currently related to broadband service. Furthermore, the ongoing proceeding to consider extending service quality requirements to other providers provisioning broadband service could provide the Commission with a future means to monitor these additional providers' ability to meet reliability requirements under the BEAD NOFO.

Second, the Commission can leverage the receipt of and information within Tier 1 and 2 Advice Letters submitted pursuant to the Resiliency Decisions as a measure of a prospective grantee's ability to meet resiliency obligations. While these narrative responses generally offer quantitative, as opposed to qualitative, network reliability measures, the letters indicate the ability and likelihood that a provider-subgrantee has invested in ensuring their network projects are resilient. For example, the Commission should weigh the provider-subgrantee satisfaction of the Commission's current battery backup and community engagement requirements and whether

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<sup>18</sup> BEAD NOFO at 65 ("Each Funded Network's outages should not exceed, on average, 48 hours over any 365-day period except in the case of natural disasters or other force majeure occurrence.").

the provider-subgrantee would be willing to certify to the same to receive BEAD Program funding. The Commission should consider whether to provide additional weight to proposals from prospective subgrantees without this prior performance information but are willing to certify to certain reliability and resiliency standards.

Third, and in particular for subgrantees not subject to GO-133 or the Commission's Resiliency Decisions discussed above, the Commission has several options that in combination could give staff information about the subgrantee. The Commission can consider ways for the selection process to weigh whether a network project would promote network resiliency by including in its proposal network design elements that promote pathway diversity, provide backup power to important network elements, or provide redundancies. Great weight should be given for proposals with network design elements that bring these benefits to a community subject to regular natural disasters or limited communications options given the community's insular or remote location.

**E. Question 5. Selection Among Other Last-Mile Broadband Deployment Projects. In addition to the Primary Criteria and Secondary Criteria required in the Notice of Funding Opportunity, which Additional Prioritization Factors should be considered? How should they each be measured, and should they be weighted in prioritization?**

TURN reserves the right to provide further comment in replies about the additional prioritization factors that the Commission should consider for selecting "other last-mile broadband deployment projects" as defined by the BEAD NOFO.<sup>19</sup> The BEAD NOFO describes a scenario where an Eligible Entity does not receive a proposal for a location or sets of locations to deploy a "Priority Broadband Project," but where there is a proposal that otherwise meets all other requirements for subgrantees.

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<sup>19</sup> See BEAD NOFO at 44-46 (describing the "Selection Among Other Last-Mile Broadband Deployment Projects").

**F. Questions 6. Challenge Process. States must develop and implement a transparent, evidence-based, fair, and expeditious challenge process under which a unit of local government, nonprofit organization, or broadband service provider can challenge a determination made by states as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is eligible for grant funds. Among other things, the process must allow for challenges regarding whether a particular location is unserved or underserved as defined in the Infrastructure Act and Section I.C of the Notice of Funding Opportunity. What information should be provided by a challenger as a basis for asserting service already exists at a location, or at locations, that disqualify them from being called “unserved?”**

TURN supports a transparent, evidence-based, fair and expeditious challenge process<sup>20</sup> that allows for local government, nonprofit organizations, or broadband service providers to challenge grant eligibility determinations for a particular location or community anchor institution within an Eligible Entity’s jurisdiction. TURN will provide additional detailed comments in reply but offers an initial recommendation that the Commission consider a process that requires challengers to provide information and evidence for service claims. One example is to draw from lessons learned in the CASF set of accounts as to what information and evidence should be used for this purpose.

The Commission has recognized the practices of either overreporting of service availability and using Federal Communications Commission Form 477 data,<sup>21</sup> therefore, the Commission should consider a process that allows for consumers, community stakeholders, and

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<sup>20</sup> TURN has expressed its support for a fair challenge process in other Commission proceedings. *See, e.g.*, TURN Reply Comments on Potential Modifications to CASF Broadband Infrastructure Account Program Rules (R.20-08-021), dated July 5, 2022, at pp. 15-16 (supporting challenges to the California Broadband Map instead of an application-challenge process; and, in the alternative, recommending a requirement for challengers to state why they had not timely submitted accurate data to inform the California Broadband Map for application-challenges); *and* TURN and GLI Reply Comments on Prioritizing Broadband Infrastructure Funds (R.12-10-012, predecessor CASF proceeding), dated September 28, 2018, at p. 2 (noting the challenge process is a barrier for applicants), 7-8 (supporting challenge criteria to overcome the overstatement of broadband availability), 9-10 (opposing problematic challenge process recommendations).

<sup>21</sup> D.21-03-006, R.20-08-021 at 15-16 (issued March 10, 2021) (subsection “Elimination of Form 477 Requirements” within the section “Data Submission Requirements”).

tribal governments, among others to be involved. For example, a tribal government should be able to challenge service claims in maps updated with data from broadband service provider data.<sup>22</sup> Tribal governments and even the Commission, have expressed challenges to updating the serviceable locations in the FCC's most current map. TURN appreciates the desire to use the FCC map but also underscores the challenges that so many entities in California have faced to make sure that this map is accurate.

Moreover, the Commission should consider establishing a process that incentivizes service providers to provide map information to the Commission that is updated on a timely basis, such as annually. This approach would mitigate the potential for challengers to delay application review. Relatedly, to further mitigate against application review delay, the Commission should reject challenge applications from service providers that claim service availability but do not update their information in the relevant maps. Outdated map information unnecessarily frustrates the application review process. TURN may provide additional input in replies.

**G. Question 7. Match Requirement. The IIJA expressly provides that matching funds for the BEAD Program may come from federal regional government entities and from funds that were provided to an Eligible Entity or a subgrantee for the purpose of deploying broadband service under the Families First Coronavirus Response Act, the CARES Act, the Consolidated Appropriations Act of 2021, or the American Rescue Plan Act of 2021, to the extent permitted by those laws. What state funding should also be allowed to be used as matching funds?**

The OIR seeks comment on how to leverage state funding sources, TURN will provide additional comment in reply. However, TURN recommends that the Commission also explore how other sources of eligible matching funding, such as in-kind contributions, can satisfy the

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<sup>22</sup> Others have expressed concerns about other FCC map inaccuracies related to community anchor institutions and multi-family residential housing. *See* Schools, Health & Libraries Broadband (SHLB) Coalition Comments on BEAD OIR at 6-7 (served April 17, 2023).

matching requirement. TURN acknowledges that the OIR seeks comment on a narrow subset of waiver-related issues, but these do not cover the important equity concerns related to the matching requirement.

The BEAD NOFO requires subgrantees to include in their proposal at least a 25 percent match with certain exceptions.<sup>23</sup> The BEAD NOFO exempts high-cost projects from the requirement and permits that the matching requirement can also be satisfied by in-kind contributions.<sup>24</sup> Further, the IIJA and the BEAD NOFO permit the NTIA to waive the matching requirement altogether at the request of the Eligible Entity based on special circumstances that would serve the public interest and “effectuate the purpose of the BEAD Program.”<sup>25</sup>

The BEAD NOFO acknowledges that the matching requirement “could deter participation in the BEAD Program by small and non-traditional providers, in marginalized or low-income communities, or could threaten affordability[.]”<sup>26</sup> The BEAD NOFO provides Eligible Entities with an opportunity to consider alternative ways to cover some or all of the matching requirement or seek a waiver. For example, where small and non-traditional providers in marginalized or low-income communities cannot raise sufficient capital to satisfy the matching requirement, the BEAD NOFO states that an Eligible Entity “should consider ways to cover part or all of the provider’s match . . . or seek a match waiver” that would alleviate the

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<sup>23</sup> BEAD NOFO at 20.

<sup>24</sup> BEAD NOFO at 20-22. The BEAD NOFO explains in-kind contributions, stating “NTIA encourages applicants to thoroughly consider potential sources of in-kind contributions that, depending on the particular property or service and the applicable federal cost principles, could include employee or volunteer services; equipment; supplies; indirect costs; computer hardware and software; and use of facilities. In the broadband context this could include, consistent with federal cost principles, waiver of fees associated with access to rights of way, pole attachments, conduits, easements, or access to other types of infrastructure.” BEAD NOFO at 22.

<sup>25</sup> BEAD NOFO at 20, 22.

<sup>26</sup> BEAD NOFO at 20.



burdens and promote opportunities for these small and non-traditional providers.<sup>27</sup>

Accordingly, the Commission should address how the matching requirement may impair the ability of certain entities to equitably access BEAD funding opportunities and seek ways to prevent the final rules from perpetuating or creating barriers that disproportionately impact certain communities. In particular, Tribal communities could be especially impacted by the matching requirement and the Commission should seek comment to address ways to mitigate or eliminate that impact.

The Commission should further explore other aspects of the matching requirement, including ways to ensure that the matching requirement does not prevent Tribal entities from fully participating in the BEAD subgrant program. The IIJA and the BEAD NOFO permits the NTIA to waive the matching requirement at the request of an Eligible Entity or a subgrantee.<sup>28</sup> In considering such a request, the NTIA “will carefully balance the Program’s various objectives . . . [and] . . . ensure that BEAD funds are used to bring affordable broadband to all Americans.” Given the well-established matching requirement for other programs posing a barrier to Tribal applicants for broadband grants,<sup>29</sup> the BEAD matching requirement also frustrates the BEAD Program’s objectives.

For this reason, the Commission should seek comment on a variety of measure to ensure that matching requirements do not unduly prevent Tribal and municipal applicants from fully participating in the BEAD Program. The Commission should seek comment on requesting a categorical exemption for Tribal communities through the waiver process outlined in the BEAD NOFO. In this vein, the Commission should seek comment clarifying the relationship between

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<sup>27</sup> BEAD NOFO at 20.

<sup>28</sup> See 47 U.S.C. § 1702(h)(3)(A)(ii); BEAD NOFO at 22, 96.

<sup>29</sup> Government Accountability Office, “Tribal Broadband: National Strategy and Coordination Framework Needed to Increase Access” at 26 (2022) (“GAO Tribal Broadband Report”).

the waiver process and the requirement to provide additional weight to proposals that minimize BEAD Program outlay. The waiver process for prospective subgrantees unable to raise sufficient capital or upfront funds should not be used to discount their proposals in the selection process. The result would further exacerbate the historical inequities that produced these capital-raising disparities in the first instance.

Further, the Commission should address the possibility that whether an area is a Tribal area can be factor in defining “high-cost areas,” as that would be otherwise exempt from the matching requirement. TURN acknowledges that the Commission has less discretion to define high-cost areas at this time, given the pending definition to be provided by the NTIA and the FCC.<sup>30</sup> However, TURN encourages the Commission to consider a definition that includes this factor as it may help influence the determination. Finally, the Commission should explore ways in which the Commission can aid Tribal applicants by initially deferring matching requirements and revisions of the proposal based on matching opportunities identified by the Commission in other existing state and applicable federal funding opportunities or helping to identify in-kind contribution opportunities.

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<sup>30</sup> See 47 U.S.C. 1701(G)(i) (an unserved area where the cost of build out is higher than a national average for unserved areas “determined by the [NTIA] Assistant Secretary, in consultation with the [FCC]” and incorporate other factors identified by the Assistant Secretary in consultation with the FCC); *see also* BEAD NOFO at 13 (“NTIA will release further information regarding the identification of high-cost areas for purposes of BEAD funding allocations at a later date”).

**H. Question 8. Statewide Middle Mile. How should the Commission prioritize subgrantee project proposals that plan on utilizing the statewide open-access middle mile network? Should the Commission require applicants proposing to build their own middle mile infrastructure with BEAD funds to make their network open access? In the event the middle mile portion of an application significantly overlaps the statewide middle mile network, should the applicant be required to consult with the California Department of Technology?**

TURN agrees with the OIR’s line of questioning regarding the relationship between California’s middle mile network and BEAD Program subgrantee proposals. The BEAD NOFO defines “middle mile infrastructure” as “any broadband infrastructure that does not connect directly to an end-user location,” and this includes a “community anchor institution.”<sup>31</sup> In addition, the BEAD NOFO middle mile infrastructure definition also includes a “leased” set of identified facilities and “wired or private wireless broadband infrastructure.”<sup>32</sup> California’s middle mile network and the ongoing plans also include broadband infrastructure owned or leased by the state for an identical purpose.<sup>33</sup>

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<sup>31</sup> BEAD NOFO 13-14.

<sup>32</sup> See BEAD NOFO at 13-14 (stating that the definition includes “—(i) leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport, and other similar services; and (ii) wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links”). BEAD NOFO explains that NTIA adopts the IJA definition of “middle mile infrastructure” but with a slight modification to include “community anchor institution” used in the BEAD Program. BEAD NOFO at 12, n.8.

<sup>33</sup> See generally California Department of Technology, “California All, Middle-Mile Broadband Initiative, Resources” (last accessed April 17, 2023) <https://middle-mile-broadband-initiative.cdt.ca.gov/pages/resources>; GoldenStateNet, “Statewide Middle-Mile Network Design,” (April 22, 2022) <https://cdt.ca.gov/wp-content/uploads/2022/04/GSN-Statewide-System-Level-Design-04222022.pdf>; Letter from Alice B. Reynolds, President, California Public Utilities Commission, to Russ Nichols, Acting Director and State Chief Information Office, California Department of Technology, regarding “Middle Mile Location Analysis and Data Report Website (March 15, 2022) <https://cdt.ca.gov/wp-content/uploads/2022/03/CPUC-Middle-Mile-Analysis-Transmittal-Letter-3-15-22.pdf>.

TURN supports for the Commission to require BEAD Program proposals that include middle-mile infrastructure proposals to be open access as explained in the BEAD NOFO's obligations for subgrantees deploying network projects.<sup>34</sup> This requirement supports the affordability considerations that TURN suggests below in Section III.C. as open access networks promote competition. Open access also provides a necessary component to connect communities with scalable and future-proof networks. TURN also supports additional comment on the manner in which proposals that overlap potentially BEAD-funded middle-mile infrastructure with the Department of Technology's middle-mile infrastructure for the state.

Furthermore, the Commission should further seek comment on how BEAD funding can enhance the state's planned middle-mile network and further extend the reach of middle-mile infrastructure to areas beyond the reach of California Department of Transportation's rights of way. Specifically, the Commission should consider the various scenarios in California where even with the California Department of Technology's middle-mile plans, areas lack access to middle-mile infrastructure, such as Tribal areas. Enabling middle mile construction to these areas lacking access to middle mile infrastructure where none is planned, could bring realistic and forward-looking solutions to these unserved or underserved communities.

Relatedly, and in furtherance of the coordination in middle-mile plans, the Commission should seek comment on whether to include enhancements of the statewide middle-mile network as an additional criterion in the subgrantee selection process. Such considerations would permit the state to fully leverage its middle-mile network by using existing funding or in-kind contribution to satisfy the BEAD Program's proposal matching requirement. TURN looks forward to providing further comment in replies.

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<sup>34</sup> See BEAD NOFO at 69 (describing subgrantee's "interconnection requirements and wholesale access"); at 14 (defining "open access").

**I. Question 9. Should the Commission include a ministerial review process whereby the Commission delegates to staff the ability to approve BEAD grants that meet certain criteria? What should those criteria be?**

TURN recommends that the Commission consider a ministerial review process for application review and will provide additional comments and recommendations in reply. As an initial matter, TURN supports a ministerial review that includes strict guidelines. A ministerial review process should consider fixed deadlines for staff review and a set of threshold monetary limits for per-household costs. The guidelines may consider additional elements, such as a grant amount threshold, among others. The process should not preclude the Commission staff from referring these applications under the set threshold or within the strict guidelines to the full Commission through a Commission resolution. Relatedly, for applications above the set thresholds or that do not meet the strict guidelines, the process should require the full Commission to review these applications through a Commission resolution. TURN will provide additional comments in reply.

**J. Question 10. Grant Conditions. What conditions should the Commission impose on BEAD subgrantees-- for example, workforce development (e.g., job training) or affordable plans?**

The Commission should consider the imposition conditions on BEAD subgrantees. For example, the Commission should consider affordability or pricing commitments. This condition would align with the BEAD NOFO's requirements, as discussed in Section III.C. TURN may provide additional comment in reply.

**K. Question 11. Grant Applications. How many application cycles should there be in a calendar year?**

TURN reserves the right to provide comment in replies.

**L. Question 12. Payments. What payment milestones should the BEAD subgrantee program adopt?**

TURN reserves the right to provide comment in replies.

**M. Question 13. Impacts on environmental and social justice communities, including the extent to which BEAD Program subgrants will impact achievement of any of the nine goals of the Commission’s Environmental and Social Justice Action Plan.**

TURN supports the OIR’s inclusion of questions seeking how the BEAD Program subgrants will impact environmental and social justice communities and progress towards achieving the Commission’s Environmental and Social Justice Action Plan goals.<sup>35</sup> Several aspects of the BEAD NOFO align with the goals of its ESJ action plan.

For example, the Commission should address how BEAD funding can improve climate resiliency in ESJ communities.<sup>36</sup> The BEAD NOFO requires an “assessment of climate threats within the Eligible Entity and proposed mitigation methods.”<sup>37</sup> Furthermore, the Commission should assess the impact that subgrantee rules on promoting high road career paths and economic opportunities.<sup>38</sup> Given the BEAD NOFO’s workforce development opportunities, the Commission should consider how the rules will permit prospective subgrantees from ESJ communities meet these career and economic goals, including Tribal applicants (as discussed in Section II.G. and III.D.).

However, beyond the impact of the grants, the Commission should establish a process to have a “comprehensive local coordination approach” as required by the BEAD NOFO. The Commission should address improving outreach and public participation opportunities to ensure

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<sup>35</sup> See BEAD OIR at 7.

<sup>36</sup> See California Public Utilities Commission, “Environmental & Social Justice Action Plan” at 42-43 (2022) (“ESJ Action Plan 2.0”) (Goal 4).

<sup>37</sup> BEAD NOFO at 32; *see also id.* 50, 62-64.

<sup>38</sup> See ESJ Action Plan 2.0 at 48-49 (Goal 7).

ESJ communities can fully engage in formulating subgrantee requirements and rules.<sup>39</sup> The BEAD NOFO requires public engagement in formulating the initial proposal and throughout the implementation process.<sup>40</sup>

ESJ communities are a vital component to the BEAD program since the NTIA “views strong involvement between Eligible Entities and local and Tribal communities as key to ensuring that the broadband needs of all unserved and underserved locations and underrepresented communities are accounted for in Initial and Final Plans.”<sup>41</sup> The BEAD NOFO further states that “local coordination promotes alignment of priorities between Eligible Entity and local and Tribal officials and helps ensure visibility of local needs and preferences.”<sup>42</sup> One of the factors the NTIA will use in evaluating this process is the “outreach to and direct engagement of unserved and underserved communities to include historically underrepresented and marginalized groups and /or communities;” also stating that the NTIA will consider “quantitative measures as well as the quality of engagements.”<sup>43</sup> To this end, TURN observes that the Commission is already undergoing a public engagement process, and TURNS provides additional comment below in Section IV.C. to further engage ESJ communities.

### **III. ADDITIONAL ISSUES THAT MUST BE ADDRESSED TO FULFILL THE BEAD PROGRAM GOALS IN CALIFORNIA**

The Commission seeks comment on how to implement other issues under the BEAD

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<sup>39</sup> See ESJ Action Plan 2.0 at 43-45 (Goal 5).

<sup>40</sup> BEAD NOFO at 25, 52-54.

<sup>41</sup> BEAD NOFO at 52.

<sup>42</sup> BEAD NOFO at 52.

<sup>43</sup> BEAD NOFO at 52-54; *see also id.* 53-54 (listing geographic coverage and diverse stakeholder groups).

NOFO.<sup>44</sup>

- A. The Commission should address how to ensure that BEAD subgrantees comply with the BEAD NOFO Civil Rights and Nondiscrimination Law Compliance requirements and that the rules harmonize with pending FCC digital discrimination rules.**

The Commission should consider how subgrantees will comply with the BEAD NOFO Civil Rights and Nondiscrimination Law Compliance requirements. Specifically, the BEAD NOFO requires that “[p]rior to distributing any BEAD funding to a subgrantee, [the state] must require the subgrantee to agree . . . to abide by the non-discrimination requirements set forth in the [NOFO list], to the extent applicable, and to acknowledge that failure to do so may result in cancellation of any award and/or recoupment of funds already disbursed.”<sup>45</sup> Part of the list provided by the NTIA includes “any other applicable non-discrimination law(s).” The same statute that enacted the BEAD Program also enacted Section 60506, Digital Discrimination section, a mandate for the Federal Communications Commission to establish rules to prevent digital discrimination.<sup>46</sup> The Commission should consider the FCC’s final digital discrimination rules as a subgrantee requirement. In addition, the Commission should consider California’s own non-discrimination laws that help ensure equitable access to BEAD-funded broadband infrastructure and broadband service.

Relatedly, TURN recommends that the Commission take lessons learned from the FCC’s Digital Discrimination proceeding,<sup>47</sup> to mitigate against digital discrimination in the application

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<sup>44</sup> See OIR 7-8 (Question 14, How should the Commission implement other issues for which it has discretion under the BEAD NOFO? Parties should specify the issues, including the statute or rule, and include specific recommendations”).

<sup>45</sup> BEAD NOFO at Section g (“Civil Rights and Nondiscrimination Law Compliance”) at 60-61.

<sup>46</sup> Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, Section 60506, “Digital Discrimination,” 135 Stat. 429, 1245-46 (2021) <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>, (codified as 47 USC § 1754).

<sup>47</sup> See *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital*



of the BEAD Program in California. The BEAD Program aims to help bridge the digital divide by, in part, promoting equitable access to broadband deployment and services. The Commission should explore ways to ensure that the FCC’s forthcoming digital discrimination rules are accounted for in subgrantee rules. For example, the Commission could implement grant conditions to ensure compliance with the FCC’s digital discrimination rules, or any similar rules promulgated by the Commission in the future. The BEAD provision of the IIJA requires that Eligible Entities:

- (C) (i) distribute the funds in an equitable and non-discriminatory manner; and
- (ii) ensure, through a stipulation in any contract with a subgrantee for the use of such funds, that each sub-grantee uses the funds in an equitable and nondiscriminatory manner.<sup>48</sup>

This IIJA statutory mandate requires equitable and non-discriminatory distribution of funds that flows through to subgrantees. To meet this requirement, the Commission should seek comment on how to implement this requirement in the final rules, such as a secondary selection criterion that addresses the needs of the unserved and underserved communities, specifically the ESJ communities.

The IIJA Digital Discrimination provisions<sup>49</sup> provide a preliminary approach for the Commission to consider these issues as the agency executes its initial proposal for the BEAD Program. The IIJA Digital Discrimination provisions (47 U.S.C. § 1754), require

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*Discrimination*, GN Docket No. 22-69, Notice of Proposed Rulemaking, FCC 22-98 (rel. Dec. 22, 2022) (“FCC Digital Discrimination NPRM”).

<sup>48</sup> 47 U.S.C. § 1702(g)(2)(C); *see also* NOFO at 56 (reiterating statutory requirement though stipulations in subgrantee contracts).

<sup>49</sup> Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, Section 60506, “Digital Discrimination,” 135 Stat. 429, 1245-46 (2021) <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>, (codified as 47 USC § 1754).

the FCC to:

. . . adopt final rules to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective, including—

(1) preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin;

and (2) identifying necessary steps for the [FCC] to take to eliminate discrimination described in paragraph (1).<sup>50</sup>

While the FCC proceeding remains active and final rules will likely be adopted fall of 2023, the proceeding offers the Commission a touchstone for ensuring BEAD funding does not exacerbate existing disparities or promote further disparities in broadband deployments or other discriminatory practices in the future.

For the BEAD Program, the Commission’s rules could further provide weight and consideration for proposals that would seek to prevent or eliminate digital discrimination, or address areas subject to digital discrimination, or incorporate measures that would require subgrantees to certify that they will not utilize BEAD funding for digital discrimination.

**B. The Commission should consider the threshold question to what degree, BEAD funds should be used for deployment or non-deployment uses, including to fulfill the NOFO requirements not previously covered in other OIR questions.**

TURN provides several suggestions about other NOFO requirements.

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<sup>50</sup> Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, Section 60102(b), “Broadband Equity, Access, and Deployment Program,” 135 Stat. 429, 1182-1205 (2021) <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>, (codified as 47 USC § 1702)

## 1. Compliance Monitoring and Management

The BEAD NOFO contains subgrantee monitoring and management requirements;<sup>51</sup> the Commission should require timely subgrantee reporting mandates and monitoring practices, accompanied by clear clawback provisions if the subgrantee fails to abide by BEAD Program requirements. This approach is in furtherance of the state's expected ongoing progress monitoring that the NTIA will conduct<sup>52</sup> and the related NTIA or state enforcement actions for various failures or nonperformance.<sup>53</sup> For example, the BEAD NOFO describes the action from NTIA or from the state if the subgrantee "fails to comply with the low-cost broadband service option requirement set out in Section 60102(h)(4)(B) of the Infrastructure Act."<sup>54</sup>

There are several approaches that the Commission may consider to fulfill these requirements; for example, quarterly compliance reporting to the Commission in the form of Tier II Advice letters that allow the parties or other stakeholders to protest and submit additional information. TURN may provide additional suggestions in reply comments.

## 2. Cybersecurity and Supply Chain Risk Management

The BEAD NOFO requires Eligible Entities to impose baseline cybersecurity requirements and provides the entity to add any additional that it chooses.<sup>55</sup> TURN recommends that the Commission consider establishing requirements of all subgrantees to comply with the NOFO in this regard. The NOFO describes in detail that these requirements are to safeguard networks and users, such as through the use of a cybersecurity risk management plan that reflects

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<sup>51</sup> BEAD NOFO at § b. ("Ensure Subgrantee Accountability") at 51.

<sup>52</sup> BEAD NOFO at § 2. ("Process Overview") at 10 (describing the "ongoing monitoring, reporting, and performance management" process).

<sup>53</sup> BEAD NOFO at § 4 ("Enforcement") at 95.

<sup>54</sup> BEAD NOFO at § 4 ("Enforcement") at 95.

<sup>55</sup> BEAD NOFO at § vi ("Cybersecurity and Supply Chain Risk Management") at 70-71.

the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity, and Executive Order 14028, that specifies the “security and privacy controls” being implemented.<sup>56</sup> Similarly, the NOFO also details a requirement for supply chain risk management for subgrantees that follows the BEAD NOFO requirements.<sup>57</sup> This set of subgrantee requirements would extend even in situations where the subgrantee relies in whole or in part on network facilities owned or operated by a third party.<sup>58</sup> TURN recommends that the Commission consider proposals and establish subgrantee rules for both cybersecurity and supply chain risk management to fulfill the NOFO requirements and to safeguard the investments being made to middle mile and last mile infrastructure and service funded by the BEAD Program.

### 3. Network Outage Monitoring

In addition, because the BEAD NOFO requires that “[e]ach [f]unded [n]etwork’s outages should not exceed, on average, 48 hours over any 365-day period except in the case of natural disasters or other force majeure occurrence,” the Commission should develop its own “metrics of measuring outages to be utilized in connection with this requirement.”<sup>59</sup> Therefore, it is imperative that the Commission rules explicitly cover these elements for subgrantee monitoring and compliance.

### 4. Affordability, Literacy, other Non-Deployment Uses

In addition, the Commission should consider allocations for affordability, literacy, and

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<sup>56</sup> BEAD NOFO at § vi (“Cybersecurity and Supply Chain Risk Management”) at 70.

<sup>57</sup> BEAD NOFO at § vi (“Cybersecurity and Supply Chain Risk Management”) at 70-71.

<sup>58</sup> BEAD NOFO at § vi (“Cybersecurity and Supply Chain Risk Management”) at 71.

<sup>59</sup> BEAD NOFO at § ii (“Network Outages”) at 65.

other uses discussed in the BEAD NOFO as non-deployment uses for BEAD funds.<sup>60</sup> Currently, the OIR is focused on deployment even though the BEAD NOFO clearly provides for non-deployment funded activities. The Commission has some examples of leveraging deployment and non-deployment activities, such as in the CASF set of accounts and programs. In fact, the Commission has taken proactive steps in the recent years to ensure that non-traditional, or non-service provider participants apply and use grant programs to serve their communities. TURN looks forward to providing additional comments in reply.

**C. The Commission should more directly address affordability requirements under the BEAD NOFO.**

TURN recommends for the Commission to address the affordability, non-deployment opportunities in the subgrantee program and seek comment on devising a comprehensive, high-level plan that integrates strategic-level affordability considerations into this rulemaking.

While the deployment focus helps the Commission meet the primary goal of reaching unserved areas, the OIR focuses too narrowly on the infrastructure challenges—for example by addressing affordability as a grant condition—while not addressing the strategic requirements and opportunities offered by the BEAD NOFO. For example, the Commissions should carefully review a lower cost proposal to deploy to an unserved community over a higher cost proposal that factors in operating costs, local workforce, and skills development, and more to improve the

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<sup>60</sup> BEAD NOFO at 66. The NOFO provides examples of affordability programs, such as requiring “providers receiving BEAD funds to offer low-cost, high-speed plans to all middle-class households using the BEAD-funded network[,] . . . consumer subsidies to defray subscription costs for households not eligible for the Affordable Connectivity Benefit or other federal subsidies[,] . . . use their regulatory authority to promote structural competition[,] . . . assign especially high weights to selection criteria relating to affordability and/or open access in selecting BEAD subgrantees[,] . . . employ a combination of these methods, or other methods not mentioned here.”

project viability.

The OIR refers expressly to affordability once.<sup>61</sup> However, the IIJA and BEAD NOFO elevate and incorporate affordability considerations throughout program design. In passing the IIJA, the U.S. Congress found that “[a]ccess to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States”<sup>62</sup> and provides the NTIA Assistant Secretary with the authority to require 5-year actions to “propose solutions for the deployment of affordable broadband service[.]”<sup>63</sup> Pursuant to this directive, the BEAD NOFO incorporates affordability considerations throughout the implementation process. Further, this general requirement is reinforced at the project-levels via affordability considerations. For example, Eligible Entities are required to “give the greatest weight for Priority Broadband Projects that commit to provide the most affordable total price to the customer for 1 Gbps/1 Gbps in the project area.”<sup>64</sup>

In addition to the general affordability considerations, the Commission should seek comment on how it can satisfy the middle-class affordability requirements in the BEAD NOFO. The BEAD NOFO requires Eligible Entities to include a “middle-class affordability plan to ensure that all consumers have access to affordable high-speed internet” in its Initial and Final Proposals.<sup>65</sup> This is a discrete requirement that must be addressed at the outset, as it can impact the structuring of subgrantee rules to incorporate additional criteria in the prioritization and selection process under consideration. The Commission should address this element in its approach. For example, by prioritizing open access, non-traditional and municipal deployments,

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<sup>61</sup> See OIR at 7 (referring to possible grant conditions such as affordable plans).

<sup>62</sup> 47 U.S.C. 1701(1).

<sup>63</sup> 47 U.S.C. 1702(e)(1)(D)(ii)(II).

<sup>64</sup> BEAD NOFO at 43 (emphasis added).

<sup>65</sup> BEAD NOFO at 66.

the Commission could promote more affordable plans for low- and middle- income communities. The BEAD NOFO highlights the expectation that Eligible Entities “will adopt diverse strategies to achieve [the middle-class affordability] objective.”<sup>66</sup>

However, the OIR refers only to affordability in reference to a grant condition, and does not reflect the diverse and multi-faceted approach expected by the NTIA. The BEAD NOFO elaborates the range of actions that Eligible Entities may use:

“providers receiving BEAD funds to offer low-cost, high-speed plans to all middle-class households using the BEAD-funded network[,] . . .

consumer subsidies to defray subscription costs for households not eligible for the Affordable Connectivity Benefit or other federal subsidies[,] . . .

use their regulatory authority to promote structural competition[,] . . .

assign especially high weights to selection criteria relating to affordability and/or open access in selecting BEAD subgrantees[,] . . . [and]

employ a combination of these methods, or other methods not mentioned here.”<sup>67</sup>

The Commission should seek comment on how it could consider a combination of these diverse methods, and others, to address the broadband affordability needs of all Californians consistent with the BEAD NOFO.

The Commission should seek comment on the affordability considerations in its comprehensive, high-level plan which will guide the prioritization and selection of BEAD subgrant proposals. The BEAD NOFO requires for Eligible Entities to provide “strategies to address affordability issues, including but not limited to strategies to increase enrollment in the Affordable Connectivity Program by eligible households.”<sup>68</sup> Given the preeminence of the affordability requirement, as discussed above, and the requirement to consider affordability

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<sup>66</sup> BEAD NOFO at 66.

<sup>67</sup> BEAD NOFO at 66.

<sup>68</sup> BEAD NOFO at 27.

issues, the Commission should more directly address them in this proceeding. While it is possible for the Commission to consider affordability and non-deployment issues at a later phase, such an effort would not abide by the BEAD NOFO's requirements for a comprehensive plan that considers how affordability considerations can inform deployment or spur the creation of non-deployment opportunities.

By failing to directly address affordability issues, the OIR effectively limits affordability considerations to grant conditions and priority considerations. However, the BEAD NOFO requires a strategy, which includes structural competition,

**D. The Commission should consider ways to respect Tribal sovereignty and ensure equitable treatment of potential Tribal subgrantees, consistent with BEAD requirements.**

The Commission should consider ways to ensure that Tribal applicants have equitable access to BEAD subgrants. The OIR refers to Tribal communities once.<sup>69</sup> However, the BEAD NOFO requires BEAD-related activities to be informed by collaboration and partnership with Tribal entities. The BEAD NOFO acknowledges that “the digital divide is particularly acute . . . for Tribal nations”<sup>70</sup> Furthermore, as discussed above in Section II.M., designing subgrantee rules to address the specific needs of Tribal entities would ensure that the Commission strives towards achieving its ESJ Action Plan 2.0 goals.

The record evidence in proceedings considering the latest modifications to CASF demonstrate the unique challenges facing Tribal communities.<sup>71</sup> Tribal communities have regularly expressed recurring challenges raising capital or issuing bonds that would prevent

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<sup>69</sup> The OIR includes a reference to the BEAD NOFO's additional proposed criteria of local and Tribal coordination in a footnote.

<sup>70</sup> BEAD NOFO at 7.

<sup>71</sup> See, e.g., Yurok Tribe Comments, Order Instituting Rulemaking Regarding Revisions to the California Advance Services Fund, Rulemaking 20-08-021 (Oct. 14, 2022).



prospective Tribal subgrantees from satisfying the BEAD matching requirement. The Commission should consider the means to ensure that Tribal communities can fully participate in the subgrant program, by leveraging existing sources to assist Tribal entities.

A similar infrastructure program passed under the Consolidated Appropriations Act, 2021 and modified by the IIJA can provide some helpful lessons to the continuing challenges facing Tribal entities. The Tribal Broadband Connectivity Program, a broadband deployment and non-deployment grant program administered by the NTIA, highlights the continuing need for further funding to meet the needs in Tribal areas. The GAO recently found that applications for that program “totaled more than five times the initial amount of funding appropriated for the program.”<sup>72</sup> Additionally, the GAO report confirms barriers posed by matching or upfront funding requirements.<sup>73</sup> As discussed above in Section II.G., the Commission should ensure Tribal subgrantee applicant proposals are presumptively not required to offer the match or that the Commission should work cooperatively with the applicant to leverage existing funding sources or identify potential in-kind contributions to satisfy the matching requirement.

**E. The Commission should consider how technical assistance and application support can promote equitable access to BEAD subgrants.**

The Commission should consider how it can support non-traditional, municipalities, small, and Tribal subgrantees. The Commission’s Local Agency Technical and Tribal Technical Assistance Grant Program provide a useful basis to support the high initial costs for potential subgrantees, and the Commission can consider how BEAD Program funding can supplement this support—especially considering the expenditure of LATA funds.

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<sup>72</sup> GAO Tribal Broadband Report at 19.

<sup>73</sup> See GAO at 26 (citing to “one tribally owned provider told [the GAO] that [the provider] had spent close to \$650,000 towards meeting engineering requirements to apply for a \$9 million loan”).

#### **IV. PROCEDURAL ISSUES**

##### **A. Categorization**

TURN does not object to the Administrative Law Judge's preliminary categorization of this proceeding as quasi-legislative.

##### **B. Need for Hearing**

TURN does not object to the Administrative Law Judge's preliminary determination that hearings are not currently necessary, however, TURN reserve the right to address factual determinations as they arise.

##### **C. Need for Public Workshops & Public Participation Hearings**

TURN recommends for the Commission to host several workshops centering the discussion on the impact of BEAD Program subgrantee program design and rules. Specifically, CPUC-hosted workshops should be held with communities that are the intended recipient of BEAD Program funding, especially ESJ communities. In addition, workshops are needed to support non-traditional and smaller prospective subgrantees, including non-profit, municipal, or Tribal representatives. These detailed workshops should focus on identifying and eliminating unnecessary barriers to participation in the BEAD program and explore creative uses of BEAD Program funding.

Many non-traditional and smaller prospective subgrantees are also unlikely to formally participate in Commission rulemakings. Therefore, the rulemaking would be better informed by relying on direct feedback from prospective subgrantees and ESJ communities that can then be part of the record in this proceeding. This would also align with the IJA's requirements that

Eligible Entities to submit a proposal “informed by collaboration with local and regional entities.”<sup>74</sup>

Relatedly, the Commission, in conjunction with the California Department of Technology (CDT), announced a series of 20 public engagement workshops that “may provide input on the proposed rules prepared by the Commission’s Communications Division Staff, upon which parties will have the opportunity to file comments.”<sup>75</sup> However, it is unclear whether these workshops would directly address the questions in the OIR, prospective subgrantee needs, ESJ communities’ needs, or how public and stakeholder input would be incorporated into the record in this proceeding.<sup>76</sup> Therefore, to ensure that the needs of non-traditional and smaller prospective subgrantees are sufficiently addressed to participate in the BEAD Program, the Commission should host workshops with an option to participate virtually, and submit the transcript into the record, or in the alternative have Commission staff submit a workshop report. The workshops proposed by TURN would not duplicate the planning workshops already announced<sup>77</sup> because these proposed workshops would focus directly on crafting the appropriate rules for the BEAD Program, as discussed above. This approach would also position the Commission to meet the critical review that the NTIA will conduct of the BEAD Program’s outreach.<sup>78</sup>

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<sup>74</sup> 47 U.S.C. § 1702(e)(D)(i)(I).

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<sup>76</sup> The Commission may consider drafting and submitting for public comment a Staff Report based on the 20 public engagement workshops hosted in conjunction with the CDT to ensure that the feedback is part of the record in this proceeding, to factor in to the 5-year plan and the Commission’s subgrantee rules.

<sup>77</sup> See, e.g., Eventbrite, “Broadband for All, Digital Equity & BEAD Planning Workshop Southern Border,” <https://www.eventbrite.com/e/broadband-for-all-digital-equity-bead-planning-workshop-southern-border-tickets-601701283737> (last accessed Apr. 17, 2023). The agenda for the event does not appear to set aside time to specifically address the subgrantee rules under consideration in this proceeding.

<sup>78</sup> NTIA will consider “quantitative measures as well as the quality of engagements.” NOFO at 52-54; see also id. 53-54 (listing geographic coverage and diverse stakeholder groups).

Furthermore, given the highly technical nature of several aspects of this proceeding, including but not limited to defining the challenge process, extremely high-cost areas, and mapping, TURN recommends that the Commission host technical workshops to address these questions as well. This approach would further allow important stakeholders that are not normally part of the Commission's rulemaking proceedings and do not have staff resources to engage as parties, to give the Commission their opinion about these important topics.

#### **D. Scope**

While the OIR limits the proceeding to rules implementing the subgrant of BEAD funding consistent with the IIJA statute and BEAD NOFO, the Commission's discretion and obligations are much broader. In addition to devising rules for subgrantees, the Eligible Entities are required to help prepare a five year action plan, an initial proposal, and strategies in this plan and proposal that can inform subgrantee rules under consideration and hold potential impact on the weight and prioritization of the subgrantee selection process. The Commission should consider other aspects of the BEAD NOFO in which Eligible Entities are granted wide discretion, as TURN discussed in Section III.

## **E. Schedule**

TURN recommends a proceeding schedule that accounts for the proposals to include workshops.

Day 1	Order Instituting Rulemaking issued
Day 20	Deadline for requests to be on service list
Day 46	Initial Comments on OIR filed and served
Day 61	Reply Comments on OIR filed and served
May & June 2023	Public & Technical workshops
June 2023	Ruling seeking opening and reply comments on Staff Proposal
July 2023	Proposed Decision
August 2023	Comment and replies on Proposed Decision

## **V. CONCLUSION**

TURN appreciates this opportunity to submit opening comments on the OIR. Subject to TURN's suggestions and the preceding reasons, TURN looks forward to ensuring that the forthcoming BEAD subgrant rules help to advance equitable and affordable access to broadband for all California communities.

Respectfully submitted,

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